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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

JOHN F. CAMERON, Individually and as  
Trustee, etc.,

Plaintiff and Appellant,

v.

KATHERINE CAMERON HOFFMAN,

Defendant and Appellant.

G052985

(Super. Ct. No. 30-2013-00685294)

O P I N I O N

Appeals from an order of the Superior Court of Orange County,  
Thomas H. Schulte, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Reversed  
with directions.

Henderson Caverly Pum & Charney, Kristen Caverly, Lisa B. Roper;  
John L. Dodd & Associates, John L. Dodd and Benjamin Ekenes for Plaintiff and  
Appellant.



Haynes and Boone, Mary-Christine Sungaila, Polly Fohn, Martin Ellison; Ross Wersching & Wolcott, Gianna Gruenwald and Suzanne M. Tague for Defendant and Appellant.

\* \* \*

#### INTRODUCTION

John F. Cameron and Katherine Cameron Hoffman,<sup>1</sup> beneficiaries of their parents' trust, entered into a settlement agreement regarding the distribution of the trust assets. After the trial court entered an order approving the settlement, Katherine claimed she had a different understanding of what the terms of the settlement agreement required. Katherine thereafter filed a motion to confirm the settlement (as she says she understood it) or, in the alternative, to set aside the settlement and the order approving it. The trial court granted the set-aside motion, and did not rule on the alternative request to confirm the settlement. Both John and Katherine appeal.

We reverse the trial court's order setting aside the order approving the settlement. The unambiguous language of the settlement agreement makes clear that John's interpretation of the trust assets was correct. To the extent extrinsic evidence is admissible, it supports that interpretation of the agreement. For the same reasons, we direct the trial court to deny the motion to confirm Katherine's hoped-for settlement agreement.

#### STATEMENT OF FACTS AND PROCEDURAL HISTORY

Ralph F. Cameron and Ruth F. Cameron established the Cameron Family Trust for the benefit of their three children, John, Katherine, and James A. Cameron.<sup>2</sup>

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<sup>1</sup> We will refer to the members of the Cameron family by their first names for convenience and ease of reference; we intend no disrespect.

<sup>2</sup> James is not involved in this matter.



The trust was divided into several subtrusts on Ruth's death in 2000. Ralph named John as the successor trustee. Ralph died in 2011.

In November 2013, Katherine filed a petition to compel a final accounting, compel a distribution of the trust, redress breaches of trust, and remove John as successor trustee. She claimed that John had breached his fiduciary duties. In January 2014, John filed a petition to approve his trust accounting, to authorize payment of trustee fees and attorney fees, for approval of the distribution of the trust's reserve, and to discharge him as successor trustee. Katherine and John each filed objections to the other's petition. The petitions were scheduled to be tried together.

In May 2015, after several months of negotiations, Katherine and John executed a settlement agreement resolving their competing petitions. The settlement agreement provides the following regarding distribution of trust assets: "John agrees to, and will make, an unequal distribution of the remaining Trust assets f/b/o John Cameron and Katherine in favor of Katherine in the total amount of \$230,625.00. The Parties agree the distribution of all remaining Trust assets . . . shall occur no later than thirty days after court approval of this Agreement, less a reserve for closing expenses in the amount of \$50,000.00 to be held in the Trust f/b/o John and Katherine."

John's counsel prepared a petition to confirm and approve the settlement agreement, which was filed in June 2015. Katherine did not file any objection to the petition. After a hearing, the court signed an order instructing John, as the trustee, "to make distribution of the Reserve of the Trust to the beneficiaries as set forth in the Petition."

In September 2015, Katherine filed a motion to confirm the settlement, pursuant to Code of Civil Procedure section 664.6, and award Katherine attorney fees and costs or, alternatively, to vacate the order granting John's petition and set aside the settlement agreement, pursuant to Code of Civil Procedure section 473. (All further statutory references are to the Code of Civil Procedure.) Katherine claimed that John's



proposed distribution of the trust assets was inconsistent with the distribution agreed to in the settlement agreement. Following briefing and a hearing, the court granted the motion to vacate, pursuant to section 473: “The Court grants the Motion under CCP §473, based on a finding that the parties did not come to a meeting of the minds as to the meaning of the terms of the settlement agreement. The Court is not granting the Motion under CCP §664.6. No attorney’s fees are awarded.” (Italics omitted.) The court vacated the minute order and the formal order approving John’s petition to confirm and approve the settlement agreement, and reset Katherine’s petition to compel distribution and John’s petition to approve the accounting for trial.

John filed a notice of appeal from the order granting relief under section 473. Katherine filed a notice of cross-appeal from the trial court’s refusal to grant the motion to enforce the settlement agreement under section 664.6, and refusal to award attorney fees.

#### STANDARD OF REVIEW

We review the trial court’s ruling on a motion for relief under section 473 for abuse of discretion. (*Zamora v. Clayborn Contracting Group, Inc.* (2002) 28 Cal.4th 249, 257 (*Zamora*).) To the extent the trial court’s ruling involved the interpretation of a contract, we review the matter de novo. (*DVD Copy Control Assn., Inc. v. Kaleidescape, Inc.* (2009) 176 Cal.App.4th 697, 713.) Further, the resolution of any ambiguities in the contract is reviewed de novo if there is no parol evidence or if the parol evidence is not in conflict. (*Ibid.*) If the parol evidence is in conflict, we review the trial court’s resolution of that conflict for substantial evidence. (*Ibid.*)

When reviewing the ruling on a motion to enforce a settlement agreement under section 664.6, we consider whether substantial evidence supports the trial court’s factual findings. (*Karpinski v. Smitty’s Bar, Inc.* (2016) 246 Cal.App.4th 456, 461.)



Where the question on appeal involves the interpretation of the terms of the settlement agreement, however, we review the matter de novo. (*Ibid.*)

We review the trial court's rulings on John's objections to Katherine's evidence for abuse of discretion. (*People ex rel. Harris v. Sarpas* (2014) 225 Cal.App.4th 1539, 1555.)

#### INTERPRETATION OF THE SETTLEMENT AGREEMENT

Because all issues in this appeal relate to the meaning of the paragraph in the settlement agreement regarding distribution of the trust assets, we turn our attention to the matter of contract interpretation.

In the settlement agreement, John and Katherine agreed that the then current value of the trust assets for their benefit was \$1,055,001.97.<sup>3</sup> As noted *ante*, the issues on appeal turn on the language in paragraph 7 of the settlement agreement: "John agrees to, and will make, an unequal distribution of the remaining Trust assets f/b/o John Cameron and Katherine in favor of Katherine in the total amount of \$230,625.00." Katherine claims that the \$230,625 unequal distribution was to be taken completely from John's share of the trust assets. John claims that the \$230,625 distribution was to be taken from the total of the trust assets, and then the remaining trust assets would be divided equally. John's contention is consistent with the proposed distribution in the petition to approve the settlement, which the trial court granted. Indeed, the petition

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<sup>3</sup> The settlement agreement specifically noted that while the asset values could fluctuate with market conditions, no substantial change was anticipated before the assets were distributed.



makes it explicit that the \$230,625 was to be paid from the total trust assets, with the 50/50 distribution following it. In relevant part, the petition reads:

| <b><u>Fund</u></b>  | <b><u>% to be Distributed</u></b> [¶] . . . [¶]  |
|---|--|
| “Survivor’s Trust FBO John F. Cameron and Katherine Cameron Hoffman       | 50% to John F. Cameron<br>50% to Katherine Cameron Hoffman   |
| “QTIP Marital Trust FBO John F. Cameron and Katherine Cameron Hoffman     | \$230,625.00 in kind assets to Katherine Cameron Hoffman; then remainder 50% to John F. Cameron and<br>50% to Katherine Cameron Hoffman<br>[¶] . . . [¶] |
| “Non QTIP Marital Trust FBO John F. Cameron and Katherine Cameron Hoffman | 50% to John F. Cameron<br>50% to Katherine Cameron Hoffman”  |

Katherine did not object to the language of the petition to approve the settlement.<sup>4</sup> The language of the petition to approve the settlement, which the trial court granted, leaves no room for disagreement: It clearly and explicitly provides that payment to Katherine, in kind, was to come from the trust assets held for the joint benefit of John

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<sup>4</sup> John’s trial counsel stated in a declaration, filed in opposition to Katherine’s motion to vacate the order granting the petition or confirm the settlement agreement, that during the hearing on the petition to approve the settlement, “I explained the settlement reached by the parties. I specifically described the distribution that would occur as set forth in the Settlement Petition [quoted *ante*]. . . . The Court asked [Katherine’s trial counsel] whether she had any objection. [She] stated she had no objection.” Katherine’s trial counsel stated in her own declaration filed in reply: “Contrary to the Declaration of [John’s trial counsel], I do not believe [counsel] read into the record paragraph 78 of the Petition verbatim. I certainly did not hear her recite that paragraph on court call. My recollection is that she simply informed the court that we had reached a settlement. At that time, I believed that the parties had reached a settlement and informed the court that we had done so.” Whether the language of the petition was read into the record is irrelevant. The written language was before the court, and had been reviewed by the parties and their counsel before the hearing.



and Katherine before the remainder of those trust assets was divided equally between John and Katherine.

“California recognizes the objective theory of contracts [citation], under which ‘[i]t is the objective intent, as evidenced by the words of the contract, rather than the subjective intent of one of the parties, that controls interpretation’ [citation]. The parties’ undisclosed intent or understanding is irrelevant to contract interpretation. [Citations.]” (*Founding Members of the Newport Beach Country Club v. Newport Beach Country Club, Inc.* (2003) 109 Cal.App.4th 944, 956.)

“The basic goal of contract interpretation is to give effect to the parties’ mutual intent at the time of contracting. [Citations.] When a contract is reduced to writing, the parties’ intention is determined from the writing alone, if possible. [Citation.] ‘The words of a contract are to be understood in their ordinary and popular sense.’ [Citations.] [¶] Extrinsic evidence is admissible to prove a meaning to which the contract is reasonably susceptible. [Citations.] If the trial court decides, after receiving the extrinsic evidence, the language of the contract is reasonably susceptible to the interpretation urged, the evidence is admitted to aid in interpreting the contract. [Citations.] Thus, ‘[t]he test of admissibility of extrinsic evidence to explain the meaning of a written instrument is not whether it appears to the court to be plain and unambiguous on its face, but whether the offered evidence is relevant to prove a meaning to which the language of the instrument is reasonably susceptible.’ [Citation.]” (*Founding Members of the Newport Beach Country Club v. Newport Beach Country Club, Inc., supra*, 109 Cal.App.4th at p. 955.)

“When the meaning of the words used in a contract is disputed, the trial court engages in a three-step process. First, it provisionally receives any proffered extrinsic evidence that is relevant to prove a meaning to which the language of the instrument is reasonably susceptible. [Citations.] If, in light of the extrinsic evidence, the language is reasonably susceptible to the interpretation urged, the extrinsic evidence



is then admitted to aid the court in its role in interpreting the contract. [Citations.] When there is no material conflict in the extrinsic evidence, the trial court interprets the contract as a matter of law. [Citations.] This is true even when conflicting inferences may be drawn from the undisputed extrinsic evidence [citations] or that extrinsic evidence renders the contract terms susceptible to more than one reasonable interpretation. [Citations.] If, however, there is a conflict in the extrinsic evidence, the factual conflict is to be resolved by the jury. [Citations.]” (*Wolf v. Walt Disney Pictures & Television* (2008) 162 Cal.App.4th 1107, 1126-1127, fn. omitted.)

The extrinsic evidence offered to explain the meaning of the settlement agreement’s phrase “an unequal distribution of the remaining Trust assets f/b/o John Cameron and Katherine in favor of Katherine in the total amount of \$230,625.00” is the written communications exchanged between counsel for John and Katherine leading up to the settlement agreement, which is included in the appellate record.<sup>5</sup> This evidence is undisputed, as neither party contends that there are any additional oral or written communications regarding settlement that bear on the issue of the interpretation of the settlement agreement, nor that the evidence in the record does not accurately reflect the exchange of settlement offers. We set forth here the salient terms from each of the parties’ various settlement offers:<sup>6</sup>

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<sup>5</sup> John contends that the trial court erred in overruling his objections to the parol evidence offered by Katherine. As explained *ante*, the parol evidence was admissible to explain the meaning of the settlement agreement. The trial court properly exercised its discretion in admitting the written settlement offers, as well as the statements regarding the writer’s intent, while excluding statements as to other people’s intent, and comments concerning the contents of the written settlement offers.

<sup>6</sup> Only the portions of the settlement discussions directly relevant to the interpretation of “unequal distribution” will be mentioned here. For instance, terms relating to the transfer of personal items will not be mentioned. Also, the first two letters between counsel containing settlement offers do not address any sort of distribution, and will not be mentioned here to avoid unnecessary confusion.



*October 6, 2014 offer from Katherine*

Payment of \$400,000 from John to Katherine “from his share of the house.”

John’s attorney fees in excess of \$14,000 paid by John.

Distribution of the trust assets by the end of the year.

Payment from the trust of LevitZacks’s accounting fees disclosed in the accounting; all other LevitZacks’s fees to be paid by John.

*October 6, 2014 offer from John*

No payment from John to Katherine.

John’s attorney fees in excess of \$14,000 paid by John.

Distribution of the trust assets by the end of the year.

Payment from the trust of all accounting fees.

*February 10, 2015 offer from John*

No payment from John to Katherine.

John’s attorney fees in excess of \$14,000 paid by John.

Payment from the trust of all accounting fees.

Distribution of the trust assets within 30 days after court approval, less a reasonable reserve for closing expenses.<sup>7</sup>

*February 17, 2015 offer from Katherine*

Distribution of the trust assets within 30 days after court approval.

“John will pay Kate a total of \$250,000.00 to settle these matters. To the extent possible, this amount will be paid from John’s share of the Trust when it is distributed . . . .”

John’s attorney fees in excess of \$14,000 paid by John.

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<sup>7</sup> This offer was identical to John’s last offer in October 2014.



Payment from the trust of all accounting fees, subject to Katherine's objection for excessive and unnecessary fees.

*April 14, 2015 offer from John*

"John will agree to an unequal distribution of the remaining trust assets in favor of Kate in the total amount of \$70,000."

Distribution of the trust assets within 30 days after court approval, less a \$50,000 reserve for closing expenses.

This letter notes that John's attorney "reframed the settlement points somewhat so that both parties can focus on the net economic costs and benefits of a settlement."

*April 21, 2015 offer from Katherine*

Distribution of the trust assets within 30 days after court approval, less a \$50,000 reserve for closing expenses.

"John will pay Kate \$207,500.00 to compensate her for her attorney fees and costs . . . , the sale of the house . . . , and the LevitZacks fees . . . ."

John's attorney fees in excess of \$14,000 paid by John.

*April 23, 2015 offer from John*

"John will agree to an unequal distribution of the remaining trust assets in favor of Kate in the total amount of \$80,000."

Distribution of the trust assets within 30 days after court approval, less a \$50,000 reserve for closing expenses.

*April 30, 2015 offer from John*

"John will agree to an unequal distribution of the remaining trust assets in favor of Kate in the total amount of \$155,000."

Distribution of the trust assets within 30 days after court approval, less a \$50,000 reserve for closing expenses.



*May 4, 2015 offer from Katherine*

“Kate will receive an unequal distribution in her favor that is equal to \$177,000 **plus** the amount(s) already paid from Kate’s share of the Trust for John’s attorney fees and costs . . . .”

Distribution of the trust assets within 30 days after court approval, less a \$50,000 reserve for closing expenses.

*May 5, 2015 offer from John*

“Kate will receive an unequal distribution in her favor that is equal to \$218,750.00.”

Distribution of the trust assets within 30 days after court approval, less a \$50,000 reserve for closing expenses.

*May 5, 2015 interim settlement agreement*

“Mr. Cameron will agree to an unequal distribution of the remaining trust assets in favor of Ms. Hoffman in the total amount of \$230,625.00.”

Distribution of the trust assets within 30 days after court approval, less a \$50,000 reserve for closing expenses.

Katherine initially demanded payment directly from John for her damages. Her later counteroffers demanded distribution of the trust assets, *followed by* payments from John to her, which would be consistent with Katherine’s claim that the entirety of the unequal distribution would be taken from John’s share of the trust assets. All of John’s counteroffers, however, proposed a distribution to Katherine from the trust assets, after which the remaining trust assets would be distributed equally between John and Katherine pursuant to the trust’s terms. Ultimately, Katherine’s counteroffers began using John’s language, and proposed a distribution to her from the trust assets, followed by the distribution of the remaining trust assets. This is the essence of the language that was included in the final settlement agreement.



Katherine’s trial counsel’s declaration in support of the motion to vacate or enforce the settlement agreement or set aside the order and settlement agreement states: “Throughout the settlement negotiations, both in written and telephonic correspondence . . . , I made clear to [John’s attorneys] that Katherine need[ed] to be made whole and that John needed to pay enough money out of his own pocket to do so.”<sup>8</sup>

In her own declaration, John’s counsel refuted that claim: “Based on our discussions before and after the settlement, I believe that [Katherine’s attorney] understood that the payment proposed would be made as an off the top, or an unequal, distribution to Katherine. . . . [B]y my April 23, 2015 counter-offer, I specifically rejected [Katherine’s attorney]’s April 21, 2015 proposed structure which would have provided the payment from John.” John’s counsel’s declaration also states: “At no time did I ever tell [Katherine’s attorney] that paragraph 7 of the settlement agreement meant anything other than what was recited [therein], namely a distribution would be made from the trust assets for the benefit of John and Katherine in the amount of ‘\$230,625.00 in kind assets to Katherine Cameron; then remainder 50% to John F. Cameron and 50% to Katherine Cameron Hoffman.’” According to John’s counsel, counsel for the parties “exchanged a number of drafts of the settlement agreement—all of which provided for an unequal distribution of remaining trust assets. Although there were numerous comments and revisions to the drafts by both parties, at no time did [Katherine’s attorney] take the position the distribution of \$230,625 should come from John’s share of the trust assets FBO John and Katherine.”

Katherine argues that the term “unequal” refers to the \$230,625 coming entirely from John’s share of the trust assets. More specifically, Katherine contends that an “unequal distribution . . . in favor of Katherine” can only occur when the specified

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<sup>8</sup> This statement does not actually support Katherine’s interpretation of the unequal distribution provision. It states what Katherine hoped to have in the settlement agreement, not what the parties agreed to, or even what they thought they agreed to.



distribution comes from John's share of the trust.<sup>9</sup> We conclude, however, that the distribution of \$230,625 from the entirety of the trust assets is unequal because Katherine is indisputably receiving more than the trust terms provide before the distribution of the trust assets, while John is receiving less than the trust terms provide.

Katherine also points to her insistence throughout the negotiation period that she be reimbursed for her attorney fees incurred in the trust litigation, and argues that proves that the \$230,625 unequal distribution was to come solely from John's share of the trust assets. Katherine's attorney told the trial court that she had asked Katherine, "do you want to accept the [\$]230,000 unequal distribution, which means you will have \$132,000 of your attorneys' fees covered, plus the [\$]70,000 that came out of the trust, plus additional fees that came out of her share of the trust for the accountant's fees." This interpretation is not reasonable, given the history of the settlement negotiations set forth *ante*. Further, the settlement agreement is clear that Katherine was to "bear her own attorneys' fees and costs," which is inconsistent with an interpretation that required John to pay Katherine from his own share of the trust assets to cover her attorney fees.

Katherine's argument that the settlement agreement must be interpreted against John as its author requires little discussion. The settlement agreement includes a provision that it is deemed to be jointly prepared by both John and Katherine.

Finally, Katherine argues that the placement of the language indicates how the trust assets were to be distributed. As set forth *ante*, the language in question appears as follows in the petition:

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<sup>9</sup> In support of this argument, Katherine cites an April 21, 2015 letter from her attorney, in which Katherine demands that John pay for all of his attorney fees in excess of \$14,000, and refers to that as an "unequal distribution." However, this is not referred to as an unequal distribution in the settlement agreement, leading to the conclusion that the term "unequal distribution" is not synonymous with money coming directly from John's pocket or John's share of the trust.



“\$230,625.00 in kind assets to Katherine Cameron Hoffman; then remainder 50% to John F. Cameron and 50% to Katherine Cameron Hoffman.”

According to Katherine, that language placement means that Katherine will receive her unequal distribution of \$230,625, and then John will receive the remainder of his 50 percent share of the assets, while Katherine will receive her full 50 percent share of the trust assets, as well as the \$230,625. We see no reason to accept this argument. The placement of the words on those lines alone does not support a conclusion that John planned to mislead Katherine as to the meaning of the terms of the settlement agreement.

We conclude the settlement agreement provides that Katherine’s \$230,625 distribution was to be made from the total of the trust assets, with a 50/50 distribution of the remaining trust assets occurring thereafter.

#### APPEAL OF ORDER SETTING ASIDE SETTLEMENT

“The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect.” (§ 473, subd. (b).)

While the law normally favors set-aside motions that allow matters to be tried on their merits, this policy does not apply to orders and judgments resulting from negotiated settlements. In those circumstances, the policy favoring settlement of disputes prevails. (*Huens v. Tatum* (1997) 52 Cal.App.4th 259, 264-265; *Philippine Export & Foreign Loan Guarantee Corp. v. Chuidian* (1990) 218 Cal.App.3d 1058, 1076.) Katherine’s reliance on *Zamora, supra*, 28 Cal.4th 249, for the proposition that “the remedies under section 473 for setting aside a court order due to mistake are broader than, and concurrent with, common law remedies for rescinding contracts” is not well placed. *Zamora* involved a judgment entered after the acceptance of a section 998 offer,



not a judgment entered after a negotiated settlement agreement: “By applying the discretionary relief provision of section 473 to judgments entered pursuant to section 998, subdivision (b)(1), we simply remain faithful to these venerable principles.” (*Zamora*, *supra*, at p. 256.) In *Zamora*, the mistake was a typographical error in the section 998 offer, admittedly made by the attorney’s secretary, which conveyed a settlement offer never authorized by the client. (*Id.* at p. 253.)

Katherine contends she and John made a mutual mistake as to the terms of the settlement agreement. The Restatement Second of Contracts defines mutual mistake this way: “Where a mistake of both parties at the time a contract was made as to a basic assumption on which the contract was made has a material effect on the agreed exchange of performances, the contract is voidable by the adversely affected party unless he bears the risk of the mistake under the rule stated in § 154.” (Rest.2d Contracts, § 152, subd. (1).) Comment a to section 152 of the Restatement Second of Contracts explains: “Before making a contract, a party ordinarily evaluates the proposed exchange of performances on the basis of a variety of assumptions with respect to existing facts. Many of these assumptions are shared by the other party, in the sense that the other party is aware that they are made. The mere fact that both parties are mistaken with respect to such an assumption does not, of itself, afford a reason for avoidance of the contract by the adversely affected party. Relief is only appropriate in situations where a mistake of both parties has such a material effect on the agreed exchange of performances as to upset the very basis for the contract. [¶] This Section applies to such situations. Under it, the contract is voidable by the adversely affected party if three conditions are met. First, the mistake must relate to a ‘basic assumption on which the contract was made.’ Second, the party seeking avoidance must show that the mistake has a material effect on the agreed exchange of performances. Third, the mistake must not be one as to which the party seeking relief bears the risk. The parol evidence rule does not preclude the use of prior or contemporaneous agreements or negotiations to establish that the parties were mistaken.



See § 214(d). However, since mistakes are the exception rather than the rule, the trier of the facts should examine the evidence with particular care when a party attempts to avoid liability by proving mistake.”

As explained *ante*, there was no mutual mistake in this case. John’s understanding of the meaning of the unequal distribution provision in the settlement agreement is completely consistent with the words of the agreement and our interpretation of that provision’s meaning. This case is factually distinct from the cases on which Katherine relies: *Wright v. Lowe* (1956) 140 Cal.App.2d 891, 895, in which the parties’ contract was susceptible “of two interpretations, one favorable to the seller and one to the buyer,” and *Merced County Sheriff’s Employees’ Assn. v. County of Merced* (1987) 188 Cal.App.3d 662, 675-676, in which the portion of the contract in question was ambiguous and contradictory on its face.

Katherine also contends that her unilateral mistake as to the terms of the settlement agreement supports the set-aside order. “Where the plaintiff has no reason to know of and does not cause the defendant’s unilateral mistake of fact, the defendant must establish the following facts to obtain rescission of the contract: (1) the defendant made a mistake regarding a basic assumption upon which the defendant made the contract; (2) the mistake has a material effect upon the agreed exchange of performances that is adverse to the defendant; (3) the defendant does not bear the risk of the mistake; and (4) the effect of the mistake is such that enforcement of the contract would be unconscionable.” (*Donovan v. RRL Corp.* (2001) 26 Cal.4th 261, 282.) We need look no further than the fourth prong of the aforementioned test, to conclude that enforcement of the settlement agreement subject to Katherine’s alleged mistake would not be unconscionable. Katherine will still receive more from the trust than she would have if the trust assets had simply been split equally between her and John, as provided by the trust’s terms.



Accordingly, John's appeal has merit and we will reverse the trial court's order setting aside the court-approved settlement agreement. We reject John's argument that the doctrines of res judicata and collateral estoppel barred Katherine's set-aside motion. These doctrines apply, respectively, to bar relitigation of a cause of action or an issue that was argued and decided in an earlier, final proceeding. (*Boeken v. Philip Morris USA, Inc.* (2010) 48 Cal.4th 788, 797; *Coscia v. McKenna & Cuneo* (2001) 25 Cal.4th 1194, 1201, fn. 1.) Simply put, the motion to vacate was filed in the same proceeding as the one in which the order was entered. Indeed, John's argument that these doctrines could apply here would prevent virtually any motion for reconsideration or motion to set aside from ever being considered.

#### CROSS-APPEAL OF REFUSAL TO GRANT MOTION TO CONFIRM SETTLEMENT

"If parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement." (§ 664.6.)

Katherine's appeal argues that this court should enforce the settlement agreement in her favor because the agreement unambiguously requires that the unequal distribution in her favor come from John's share of the trust assets, not the trust assets as a whole. Katherine also argues the petition to approve the settlement agreement supports her interpretation of the unequal distribution provision. For all the reasons set forth *ante*, we reject these arguments.



DISPOSITION

The order is reversed. We direct the trial court to enter an order denying Katherine's motion in its entirety. Plaintiff and appellant to recover costs on appeal.

FYBEL, J.

WE CONCUR:

O'LEARY, P. J.

IKOLA, J.